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FAX No. 601 584 8619

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**IN THE CIRCUIT COURT OF HARRISON COUNTY, MS  
SECOND JUDICIAL DISTRICT**

**IN RE: REPUBLICAN PRIMARY FOR  
MISSISSIPPI SENATE DISTRICT 50,  
B/W SCOTT DELANO AND DIXIE NEWMAN**

**SCOTT DELANO**

**PETITIONER**

**VERSUS**

**CAUSE NO. A2402-19-128**

**DIXIE NEWMAN**

**RESPONDENT**

**ORDER**

THIS CAUSE came on to be heard upon a Petition for Contest of Primary Election and Judicial Review filed by Scott DeLano, Petitioner, with Entry of Appearance by counsel for the Respondent, Dixie Newman and the attorneys for the respective parties having appeared before the Court for a conference and a request ore tenus, the Court finds and adjudicates as follows:

**I.**

That the Hon. Richard W. McKenzie, Senior Status Judge, was appointed Special Judge to preside over the matter by Corrected Order of the Supreme Court of Mississippi dated September 6, 2019. That this Court has jurisdiction over the subject matter pursuant to MCA Section 23-15-927, as amended, and over the parties herein with proper venue.

**II.**

That after all votes were counted and canvassed for the Republican Senate District 50 primary election held on August 6, 2019, the Harrison County Republican Executive Committee certified the Respondent as the winner and Republican nominee of the primary election with a one-vote margin of victory over the Petitioner. The Petitioner and Respondent along with their

representatives conducted an examination of the ballot boxes and election materials and the Petitioner filed a timely Petition for Contest before the Harrison County Republican Executive Committee with the Respondent filing a Cross-Petition. Pursuant to MCA Section 23-15-921, as amended, the Harrison County Republican Executive Committee reviewed the matter at a hearing held on September 3, 2019, and conducted an investigation of the matters set forth in such pleadings. That the respective attorneys for both parties informed the County Republican Executive Committee that there was no dispute that eighteen (18) voters improperly voted in such primary election and such voters were 1) either residing in Senate District 49, but actually unlawfully registered in Senate District 50; or 2) that they were living in Senate District 50, but actually unlawfully registered in Senate District 49 and not allowed to vote in Senate District 50. The Petitioner's attorney also provided information about other irregularities concerning absentee and affidavit ballots and other matters in his Petition concerning the poll managers' activities that allegedly occurred in the Split Precincts as set forth in his Petition. That at such hearing and based upon the foregoing irregularities and the authority provided in MCA Section 23-15-593, as amended, and applicable case law, the attorneys for the Petitioner and Respondent (in the presence of the candidates) made a joint oral request to the Harrison County Republican Executive Committee that the election results should be decertified and special election should be called with a partial revote in only the following Split Precincts in Senate District 50:

1. Saucier
2. New Hope
3. Howard Creek
4. Margaret Sherry
5. Biloxi #11 (Donald Snyder)

The parties' counsel submitted that the violation of the mandatory provisions of the Election Code had been violated and based upon these violations the integrity of the primary election

could not be ensured. The parties' counsel further argued the receipt of the unlawful ballots would have affected the outcome of the election or because the unlawful ballots had been commingled with the other valid ballots it would have been impossible to ascertain the true will of the voters in these specific precincts. Although the Harrison County Republican Executive Committee expressed their support to the candidates to have a special election held in these Split Precincts, the Executive Committee advised that they must deny the request because they had received legal advice that they did not have the legal authority to grant such relief once they had certified the election results.

### III.

Counsel for the Petitioner and the Respondent have advised the Court that the aforementioned irregularities that occurred in the Republican Primary Election for Senate District 50 concerning the errors in registration in the poll books are factually undisputed and have been independently verified by the Harrison County Circuit Clerk's office. The Court concludes that based upon the one-vote margin of victory of the Respondent and the violation of the mandatory provisions of the election laws these errors would have changed the outcome of the election or it would have been impossible to discern the true will of the voters pursuant to MCA Section 23-15-539, as amended. Therefore, the Court declares that a special election should be called in the aforementioned Split Precincts with a partial revote pursuant to MCA Section 23-15-937, as amended. See *Barbour V. Gunn*, 890 So.2d 843 (Miss. 2004) and *In Re Election for House of Representatives Dist. 71*, 987 So.2d 917 (Miss. 2008). The original votes from the Non-Split Precincts of Republican Senate District 50 shall stand as originally counted, and the votes from the Special Election will be counted in addition to the votes originally certified from the Non-Split Precincts of Republican Senate District 50. The Court finds that it not necessary to include the Harrison County Election Commission as a part of a Special

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Tribunal to adjudicate this matter since the Election Commissioners conducted the primary election on behalf of the Harrison County Republican Executive Committee by agreement and there is no dispute between the parties as to the facts presented to the Court for a determination of the relevant issues. It is therefore,

ORDERED that the Harrison County Republican Party Executive Committee's certification proclaiming the Respondent, Dixie Newman, as the winner of the Senate District 50 race and the Republican Nominee for such position is hereby vacated and set aside and the Court does hereby declare that a special election shall be held for such position with a partial re-vote to occur in the following Split Precincts in Senate District 50, subject to the prohibition found in MCA Section 23-15-575, as amended, pertaining to "cross-over voting":

1. Saucier
2. New Hope
3. Howard Creek
4. Margaret Sherry
5. Biloxi #11 (Donald Snyder)

The original votes from the Non-Split Precincts of Republican Senate District 50 shall stand as originally counted, and the votes from the Special Election will be counted in addition to the votes originally certified from the Non-Split Precincts of Republican Senate District 50. The special election date shall be set by the Governor's office as provided in MCA Section 23-15-937, as amended. It is therefore,

ORDERED AND ADJUDGED this the 17<sup>th</sup> day of September, 2019.

  
SPECIAL CIRCUIT COURT JUDGE

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APPROVED:

  
Malinda F. Jones (MCD #1777)